30th Congress, 1st Session. [SENATE.] Rep. Com., No. 101.

IN SENATE OF THE UNITED STATES.

March 27, 1848.

Submitted, and ordered to be printed.

Mr. Westcott made the following

REPORT:

[To accompany bill H. R. No. 28.]

The Committee on Patents and the Patent Office, to whom was referred the petition of Calvin Emmons, praying a renewal and extension of his patent for a threshing machine, and his improvements thereto; and to which was also referred House bill No. 28, passed upon a similar petition to the House of Representatives at this session, report:

That this petition was presented to the Senate, January 20, 1845, and referred to this committee, but it seems no action was had thereon at that session. On the 20th December, 1845, the petition was again presented and referred, and February 26, 1846, a bill for relief of petitioner (S. 97) was reported, but which was only read a first and second time. On the 14th of December, 1846, the same petition was again presented to the Senate and referred, and February 18, 1847, another bill for petitioner's relief was reported, (S. 167) It was only read a first and second time. This petition was last presented to the Senate, December 14, 1847. On the 20th of December, 1847, the petitioner presented a duplicate of the petition to the Senate to the House of Representatives. It was referred to the Committee on Patents of the House, which, February 29, 1848, made a brief report (report No. 213) favorable to the petitioner, accompanied by a bill for his relief, (H. R., No. 28,) and which, March 3, 1845, passed the House without amendment. The report of the Committee on Patents, of the House, is as follows:

"That it appears to the satisfaction of the committee that Calvin Emmons was the original inventor of the machine, for which he took out a patent; that the invention is valuable and useful, and that the inventor has received no adequate remuneration for his time, trouble, and expense, in introducing it to public use; that he applied for an extension of his patent, in pursuance of the provisions of the act of Congress, about twenty days prior to its expiration, but that the application was rejected for want of time to give public notice, agreeably to the rules established by the board in

such cases. The act of Congress does not prescribe any particular time, or limit the period in which applications for extension of patents must be made. The petitioner represents that he had no knowledge of the existence of the rule under which his application was rejected. The committee therefore recommend the passage of the bill."

The petitioner has filed with the petition to the Senate, and also with that to the House, a printed copy of his patent, dated 27th July, 1829, and the schedule or specification of his invention, but there is no authentication thereof. This patent expired 27th July, 1843.

The petitioner, in asking for the renewal and extension of his patent, alleges, "about seventeen days prior to the expiration of the term of said patent, to wit: on or about the 10th day of July, 1843, he made application to the Commissioner of Patents for an extension of his patent, agreeably to, and in manner as the act of Congress in such case provides; but as your petitioner was informed by the Commissioner of Patents, that it had been previously decided that no renewal of a patent could be granted unless application be made at least sixty days prior to the expiration of the patent, such time being, in the opinion of the Attorney General, necessary for public notice." He further states that he was misled by the absence of any express provision in the act of 4th July, 1836, [vide Statutes at Large, volume 5, page 117, &c., chapter 387, and see section 18, page 124,] prescribing such limitation, and had no knowledge of the decision or rule of the "board," founded upon the opinion of the Attorney General, which was made to enable the provision requiring notice, with that prohibiting an extension, after the patent had expired, to be complied with. He sets forth the great merits, public utility, and value of his invention, "by rendering the labor and expense attending the threshing out of wheat, rye, oats," and other grains, and more particularly rice. He states also that "circumstances have prevented him from realizing any adequate advantage from his invention," and he asks for "a law authorising the Commissioner of Patents to grant your petitioner a new patent for the said invention, and to include such improvements as he may have, subsequently to said patent, made upon said machine, for another term of fourteen years, or such other reasonable time as Congress may deem just and proper."

The petitioner files with his petition to the Senate a letter to him from J. W. Hand, esq., dated Patent Office, July 11, 1843, and a certificate, endorsed thereon by H. L. Ellsworth, Commissioner of Patents, dated January 14, 1845, fully proving the allegations made in the petition with regard to his application for the extension of his patent, and as to the ground on which the board, under its rule, refused to consider the application.

To sustain the allegations as to the merits, public utility, and value of his invention, the petitioner has filed with the petition to the *Senate* several letters to him, and certificates from gentlemen of known high character, who have purchased and used his machine,

viz: 1st, a letter from W. A. Carson, of South Carolina, dated in 1834; 2d, P. Evans and Hon. D. E. Huger of South Carolina, dated in 1833; 3d, J. E. Godfrey, of Georgia, dated in 1838; 4th, Langdon Cheves, in 1838; 5th, W. B. Richardson, of South Carolina, dated in 1838; 6th, General J. Hamilton, jun., of South Carolina, dated in 1833; 7th, Francis Withers, dated in 1837; 8th, W. C. Daniel, of Georgia, dated in 1832; 9th, J. Evans, of South Carolina; 10th, T. Heriot, of South Carolina, dated in 1833; 11th, W. B. Mears, of North Carolina, dated in 1831; 12th, P. P. Mazyck, dated in 1833, and 13th, J. Grant, of Georgia, all of which documents express very favorable opinions of his invention, and of its great importance. With the petition to the *House* he filed sundry letters and certificates of like character. 1st, two letters from W. C. Daniel, the first dated in 1831, and the other in 1838; 2d, a certificate of Francis Withers, John T. Green, and E. T. Heriot, of South Carolina, dated in 1831; 3d, a certificate of F. Withers, dated in 1832; 4th, a letter from Messrs. Pettigru and Lescure, of South Carolina, dated in 1843; 5th, two letters from L. Cheeves, of South Carolina, dated in 1838; 6th, two letters from General J. Hamilton, jun., dated in 1831; 7th, letters from T. M. Weston, written in 1832; 8th, J. M. Tillman, dated in 1833; 9th, four letters from Hon. R. W. Habersham, three dated in 1838, and one in 1839; 10th, two letters from W. A. Carson, of South Carolina, one dated in 1832, and the other in 1833; 11th, P. Evans's certificate, dated in 1831; 12th, printed advertisement of Lancaster and Baker, and certificates of sundry persons appended thereto, dated in 1833.

These documents are, by no means, in such legal form as should generally be required with respect to papers to be used as evidence to be submitted to Congress, and but for the consideration tha at two former sessions they were regarded by the Committee on Patents as sufficient, and the petitioner thereby led to believe it was not necessary to procure more authentic proofs, they would now be rejected.

The committee also, under the circumstances of this case, are better satisfied to receive these proofs, as being written at different times, and some many years before the expiration of the patent, and not gotten up for the purpose of being used in procuring an extension of the patent, they are entitled to more weight than such testimonials prepared for such use. This evidence is entirely satisfactory to the committee as to the merits, public utility, and value of the invention; and in those respects the petitioner's case is entitled to favorable consideration.

Annexed to the petition to the Senate, in 1845, is an account of the sales by the petitioner of his invention, and also a statement of the value of his invention to the public. The *account* is sworn to by the petitioner. The "account" states the following sales of the invention up to 1845, in different States, viz:

In New York	$2,356
Connecticut	678
Massachusetts	310

In Michigan	40
New Jersey	972
Delaware	50
Pennsylvania	1,770
Maryland	300
Virginia	1,400
Ohio	1,000
Indiana, Illinois, Missouri, and part of Michigan	1,000
North Carolina, 5 plantation rights	500
South Carolina, 81 plantation rights	9,445
Georgia	1,780
	$21,601
Losses of purchase money not paid	1,200
The cost of sundry experiments	1,500
Amount paid to agents	4,599
Losses on property taken in payment for rights	4,000
Patentees time, 1829 to 1840, 11 years, at $800 per year	8,800
Expenses of travelling during said period	4,600
	24,699
Deduct amount of sales	21,601
Estimated amount of losses	3,048

The "*account*" annexed to the petition to the House is a copy of that filed with the petition to the Senate.

The "statement" estimates that 130 machines were then in use in the United States on rice plantations, and that the *annual* saving from their use is, the average, $500 each, making $65,000. It is estimated, that an equal number were then wanted, the annual public value of the whole being $130,000. The annual value of the machines for *wheat*, *rye*, *oats*, &c., in the United States is estimated at $65,000, the aggregate being $195,000.

The "statement" or "estimate" to the House, in 1847, states the invention of machines in use to be 200, and, following the same rules of calculation pursued in 1845, gives the annual value of the machines to the public at $300,000.

Though objection could be made to the want of legal *proof*, that the patentee has not received adequate compensation or reward for his invention, yet, as such fact may, in this case, be conceded without a dangerous relaxation of the rule to require strict proof thereof, inasmuch as the character of the invention, the uses to which it is peculiarly applied, the cost of constructing the machine, and the notoriety that its introduction in many parts of the country of the invention has hitherto been but partial, convince the committee of the truth of the allegations on this point in the petition, and that his prayer for relief is, on this score, entitled to favorable consideration.

As this petition has been before Congress since January, 1845, all assignees and others, who may be interested to oppose the extension of the patent prayed for, have had full opportunity to resist it; but no memorial against it has been presented, and no objection can be urged on the ground of notice not being given.

It is true the case has not been presented or proved strictly in conformity to the rules suggested in a report of this committee (see report, No. 80) at this session, (as the rules that should govern in regard to applications to Congress for the extension of a patent,) but the consideration that this petition was originally presented, and the proofs in support of it preferred, more than four years ago, and before these rules were stated, and that no exception has been made to the form of these proofs at previous sessions, has induced the committee to waive such want of strict conformity to these rules. The peculiar circumstances of this case are such that the relaxation of those rules in it cannot be urged as a precedent for their relaxation in cases that are presented hereafter.

Though the committee consider that petitioner's application for an extension of his patent may be safely and properly granted, they do not agree that the bill which has passed the House should be passed by the Senate without amendment.

The House bill proposes an extension for "*fourteen*" years. This committee deem it inexpedient to allow such extension beyond *seven* years. The first Senate bill, No. 97, and the second, No. 167, proposed to extend the patent for but *seven* years. The general patent law of 1836, section 18, authorizes the "board" to extend a patent for seven years only. In the judgment of this committee, the rule, that no patent should be extended beyond *seven* years after the expiration of the first term of *fourteen* years, should be inflexible. The committee cannot conjecture a case in which a departure from it could be justifiable on principles of wise and sound legislation. *Twenty-one* years is a term all-sufficient for any patentee, if his invention is of any practical utility, and he is not remiss in his efforts to introduce it into use, and reap full reward for his ingenuity. If, in any case, from extraordinary circumstances, such term may not be long enough, a second application can be made to Congress on the expiration of the term of the first extension.

Both the bills formerly reported authorized the renewal and extension of the patent, by the Commissioner, only upon the payment of the usual fees and charges to the Patent Office; but this provision is omitted in the House bill. For reasons of obvious policy and propriety, as to release such fees, &c., would encourage applications to Congress, instead of the "board," and impose labor and trouble, and the appropriation of the time of the public officers for an individual, without remuneration to them or to the government, the committee deems it proper to recommend that the House bill be amended, by the insertion of a provision requiring the payment of the usual fees.

Again: as the patent granted by the Commissioner to petitioner is not by law conclusive evidence of the patentee's being the in-

ventor, &c., the extension granted by special act of Congress should have no more force than the original patent; and to prevent such construction being possibly made, the committee recommend the amendment of the House bill by the insertion of such provision.

The committee, therefore, report back the House bill, No. 28, and recommend that it be amended as suggested, and passed.